IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE NO. 691 OF 2004
IN
EXECUTION APPLICATION N0.123 OF 2004
IN
MURADABAD SUIT NO. 885 OF 1996

Smt. Perveen Kauser. ... Plaintiff.

V/s.

Smt. Shah Jahan Begum & Ors. ... Defendants.

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Mr. Sanjeev Hariakar for the Plaintiff.

Mr. Wajid Shaikh for Defendant No.3.

Defendant No.3 present.

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CORAM : SMT. ROSHAN DALVI, J.

DATE : 9TH FEBRUARY 2007.

P.C. :

1. An ex-parte decree in the above Suit came to be passed on 11th August 2003. Under the said decree, Defendant Nos.2 to 5 and 7 to 11 who are the heirs and legal representatives of one Habibur Rehman came to be injuncted from transferring, selling and creating third party rights in the residential property at flat Nos.10/11, 4th floor, Building 32, Apna Ghar II, Sankli Street, Byculla, Mumbai, Shalimar Restaurant at Sankli Street and two shops also at Sankli Street which are shown in the Execution Application. They are also restrained from collecting rents from the tenants of the Shalimar Restaurant and the 2 shops.

2. The decree has not been challenged. After taking out two Execution Applications on 14.11.2003 and serving the above notice which is taken out under the provisions of Order XXI Rule 32 of the C.P.C. upon the Defendants, Defendant No.3 has filed his affidavit in reply on 9.7.2004. Even despite the knowledge of the decree, none of the Defendants including Defendant No.3 has applied to set aside the decree. The decree must therefore be executed.

3. Defendant No.3 who is present before me states that there were two wives, three sons and 4 daughters of the deceased Habibur Rehman. One of the wives has expired.

4. Defendant No.3 confirmed the above properties of the deceased. He states that he, his two brothers and his mother receive a rent of Rs.11,500/- from the tenant of Shalimar Restaurant and Rs.3,500/- from the two shops at Sankli Street, Grant Road, Mumbai. The parties live in two flats in Apna Ghar Building which are held by them on ownership basis.

5. The decree grants an injunction against Defendant Nos.2 to 5 and 7 to 11 from transferring the suit property to anyone. That decree stands and the Defendants have not transferred the properties.

6. The ex-parte decree grants a further injunction upon the tenants who are Defendant Nos.12 to 15 not to pay rent to Defendant Nos.2 to 11 and Defendant Nos.2 to 11 not to accept the rent from the tenants. Despite that, the Defendants continue to receive and pay rents to the complete exclusion of the Plaintiff. Hence, this notice has been taken out.

7. Defendant No.3 has sought to show cause to the notice by stating that Muradabad house which is 70 sq.mtrs. in area is given on rent by the Plaintiff to the tenant and she receives Rs.1,000/- per month from her tenant. The Plaintiff denies that fact. The Plaintiff has not produced any rent receipt showing receipt of any other amount by way of rent. Though she has not challenged that the Muradabad property is in possession of another person.

8. Despite receipt of the rent by the Plaintiff as stated by Defendant No.3, it is seen that she still receives lesser than her share of the rent. Hence, even if, the decree is not fully complied, as per the contention of Defendant No.3, the Plaintiff would still be required to pay some amount of rent.

9. The suit is filed only for injunction and not for receipt of rent from the total amount of rent of Rs.16,000/- from all the properties and considering that

there are 8 claimants (one of the mothers having expired) The Plaintiff would still be entitled to Rs.2,000/- by way of rent.

10. Since this is a family dispute, it is required to be resolved amicably and equitably. The parties have not been able to settle their dispute. Consequently, the notice is required to be made absolute partially. There are two tenants stated to be paying Rs.3,500/- to the three brothers and one mother who are alone appropriating the rent from the tenants of the two shops. One of the tenants must, therefore, pay the rent to the Plaintiff instead. Grant of the order under the notice would therefore be to that end to meet end of justice.

11. Defendant No.3 states to the Court that Respondent No.15 C.V. Mohmmed pays rent of Rs.1,500/- to him. Consequently, if Respondent No.15 is restrained from paying that rent to Defendant Nos.2 to 11 and instead pay to the Plaintiff, ends of justice will be met and there would be sufficient compliance with the decree, until the shares of the parties are determined. Hence, the following order :-

(i) Respondent No.15 C.V. Mohammed shall not pay any further rents to Defendant No.2 to 11. He shall pay rent to the Plaintiff. the Plaintiff shall execute rent receipts for the rents paid by Respondent No.15. It is

clarified that if Respondent No.15 does not obey the decree or this order in execution of the decree dated 11.8.2003, he shall be proceeded against any civil prison under the provisions of Order XXI Rule 32(1) of C.P.C.

(ii) Similarly, Defendant Nos.1 to 11 shall not collect rent from Respondent No.15 C.V. Mohammed. It is clarified that if any of the Respondents collects rent from Respondent No.15, they shall be proceeded with in execution of the decree dated 11.8.2003 which has come to their knowledge atleast in the year 2004 when the Execution Application was served and which has not yet been challenged, by committing them to Civil Prison or by attachment of the said shop itself under the provisions of Order XXI Rule 32(1) of C.P.C. Notice disposed of accordingly.

(SMT.ROSHAN DALVI,J.)